In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 639

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION, PETITIONER

v.

UNITED STATES OF AMERICA, ET AL.

No. 658

WASHINGTON, VIRGINIA AND MARYLAND COACH COMPANY, INC., ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA, ET AL.

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals is reported at 398 F.2d 765 (Pet. App. 17–25).[1] The opinion of the district court is reported at 268 F.Supp. 34 (Pet. App. 26–59).

[1] "Pet. App." refers to petition filed in No. 639.

325-967—68

JURISDICTION

The judgment of the court of appeals was entered on June 12, 1968. A timely petition for rehearing *en banc* was denied on August 5, 1968. The petitions for writs of certiorari were filed on October 14 and 16, 1968. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether regulations of the Secretary of the Interior, issued in the exercise of his jurisdiction to administer the federally owned George Washington Memorial Parkway, may validly prohibit commuter bus service on a segment of the Parkway, while permitting use of the same segment by buses for government, airport and sightseeing purposes and while allowing commuter buses to use other segments of the Parkway.

STATEMENT

The United States owns a strip of land along the Potomac River in Virginia on which is located the multi-lane highway known as the George Washington Memorial Parkway. The Parkway stretches from Mount Vernon on the south to the City of Alexandria and, commencing again north of Alexandria, continues through Arlington and Fairfax Counties past National Airport, Memorial and Key Bridges to its northern end at the Capital Beltway. The Parkway is administered by the Secretary of the Interior through the National Park Service.

The Secretary has been given authority by Congress to "make and publish such rules and regulations as he may deem necessary or proper for the use and management of the parks, monuments, and reserva-

tions under the jurisdiction of the National Park Service * * *." Sec. 3, Act of August 25, 1916, 39 Stat. 535, as amended, 16 U.S.C. 3. The regulations issued by the Secretary, 36 C.F.R. 50.36 (1968 ed.), provide in substance that commercial vehicles, except taxicabs and small airport transport vehicles, are prohibited on the Parkway except when authorized by permit. Between Mount Vernon and Memorial Bridge, commuter buses with a permit are allowed without limit. Between Memorial Bridge and Key Bridge, no buses are allowed. North of Key Bridge, commuter buses are allowed only to proceed to the Central Intelligence Agency with a "direct return," and, similarly, to travel from the interchange at Route 123 to the CIA and return directly. Airport buses with a permit are allowed over a fixed route north of Key Bridge without limit, and sightseeing buses with a permit may use this section of the Parkway without limit.

When Washington, Virginia and Maryland Coach Company refused to obey these regulations after extended negotiations, the United States brought suit to enjoin its use of the Parkway. D.C. Transit System, Inc., the parent corporation, and the Washington Metropolitan Area Transit Commission intervened as defendants. In a separate action, both bus companies and the Commission sued the Secretary to have the regulations declared invalid.

The district court held that the regulations illegally discriminated against commuter buses, in that they permitted unlimited use of the Parkway by such vehicles south of Memorial Bridge, while limiting such use north of Key Bridge, and in that they allowed sightseeing, airport and CIA building buses north of

Key Bridge, while prohibiting general use of this section of the Parkway by commuter buses. The court of appeals reversed, one judge dissenting, finding that the regulations had a reasonable basis on both historic and aesthetic grounds (Pet. App. 24).

ARGUMENT

The proper standard for judicial review of administrative action was here applied by the court of appeals. There is a judicial presumption of validity attaching to administrative action, and the burden is on those challenging such action to overcome that presumption (Pet. App. 23). Where control of the subject matter has been conferred by Congress on a particular official, judicial review of his action within that field is exhausted once it has been found to have a "rational basis." *Mississippi Valley Barge Line Co.* v. *United States,* 292 U.S. 282, 286–287; see Pet. App. 24. And where there is more than one solution to an administrative problem, the courts will uphold any one that has a rational basis. *Udall* v. *Tallman,* 380 U.S. 1. The task of weighing competing uses of the federal land involved in this case has been delegated by Congress to the Secretary, and his judgment in this regard will not be overturned by the courts unless it is shown to be arbitrary or beyond his authority. *United States* v. *Shimer,* 367 U.S. 374, 381–382; see Pet. App. 23.

Here the Secretary of the Interior is called upon to administer a recreational park drive exploiting the scenery of the Potomac River and to furnish approaches appropriate to entering the Nation's Capital and Mount Vernon. Act of May 29, 1930, 46 Stat. 482.

The Parkway was developed in segments at different times and under varying conditions. Below Memorial Bridge the Parkway connected with the local street system of the adjacent communities. It was developed sometime ago as the first segment of the Parkway and replaced an existing commuter railway. Historically there has never been any limitation on commuter bus service on most of this segment. Above Key Bridge, the Parkway is a limited access highway constructed in part to accommodate CIA personnel.[2] Balancing the competing purposes of providing a scenic highway and accommodating the federal facilities and traditional usage which had been made of the Parkway, the Secretary evolved the regulations upheld by the court of appeals. His determination, as the court below correctly concluded, "has a reasonable basis in the record" (Pet. App. 24).

Moreover, the instant case presents no legal issue of significance beyond its immediate facts.[3] Since the court of appeals correctly applied the well-settled

[2] Petitioners' suggestion that the Secretary is seeking to regulate bus transportation *off* the Parkway by allowing trips only directly to and from the CIA building is inappropriate. The purpose plainly is to limit usage while still accommodating CIA personnel (see Pet. App. 22), and is thus a rational one.

[3] Contrary to petitioners' contention, there was nothing improper in the court of appeals' consideration of the affidavit of the Secretary filed in support of the government's motion for summary judgment (see Pet. App. 21). That affidavit simply provided the court below with an explanation of the reasons underlying the Parkway regulations by the official who had promulgated them—a proper subject of judicial inquiry. That the affidavit was not, as a technical matter, part of the evidence contained in the record is thus hardly controlling.

standard for judicial review of administrative action, there is no occasion for further consideration.[4]

CONCLUSION

For the reasons stated, the petition for a writ of certiorari should be denied.

Respectively submitted.

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[4] There is no question in this case, as there is in *Universal Interpretive Shuttle Corp.* v. *Washington Metropolitan Area Transit Commission*, No. 19, 1968 Term, regarding the authority of that body over national park lands administered by the Secretary. The Commission's argument below was simply that the Secretary's regulations were unreasonable (Pet. App. 20, n. 3).

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